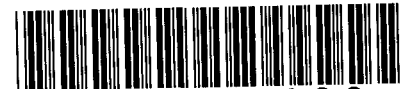


ORIGINAL

OPEN MEETING



0000123100

MEMORANDUM

RECEIVED

TO: THE COMMISSION **DOCKETED** 2011 FEB 14 P 3:46
FROM: Utilities Division FEB 14 2011
DATE: February 14, 2011 **DOCKETED BY** [Signature]
RE: STI PREPAID, LLC. AND VIVARO CORPORATION FOR EXPEDITED APPROVAL TO ENCUMBER ASSETS (DOCKET NO. T-20517A-10-0426)

Introduction

On October 19, 2010, STi Prepaid, LLC ("STi") and Vivaro Corporation ("Vivaro") filed an application to request expedited approval, pursuant to Arizona Revised Statutes ("A.R.S.") § 40-285 and to the extent necessary, to encumber STi's assets in connection with a transfer of control as financed through indebtedness payable over a period of 27 months.

The Transaction

On September 22, 2010, Vivaro entered into an agreement and plan of merger with STi whereby STi will merge into Vivaro Acquisitions LLC, a wholly-owned subsidiary of Vivaro, with STi becoming the surviving entity. As a result thereof, Vivaro will acquire all membership interests in STi and pay the current members of STi certain merger consideration in the form of cash.

Immediately prior to the closing of the transaction, Baldwin Enterprises, Inc. ("Baldwin"), an indirectly wholly-owned subsidiary of Leucadia National Corporation, will provide a loan to Vivaro to finance the majority of the merger consideration to be paid to the current members of STi. The Loan is amortizable over a 27-month period. STi will participate in the loan arrangement by acting as a guarantor and by pledging its assets.

Staff's Analysis

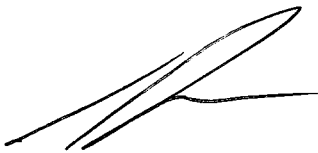
In response to a Staff email data request, STi stated that prepaid funds and deposits for Arizona customers will not be encumbered as STi does not hold customer deposits and does not believe it holds prepaid funds based on STi's sale of prepaid cards in bulk to retailers who resell the cards to customers. STi published a notice of financing application in the Arizona Republic on February 4, 2011. The corresponding affidavit was provided to Staff on February 9, 2011.

A.R.S. § 40-285 requires public service corporations to obtain Commission authorization to encumber certain utility assets. The statute serves to protect captive customers from a utility's act to dispose of any of its assets that are necessary for the provision of service; thus, it serves to preempt any service impairment due to disposal of assets essential for providing service. Staff

concludes that a pledge of STi's assets would not impair the availability of service to customers since STi provides competitive services that are available from alternative service providers.

Staff's Recommendations

Based on its analysis of the proposed transaction, Staff concludes that the transaction would not impair the financial status of STi, would not impair its ability to attract capital, nor would it impair the ability of STi to provide safe, reasonable, and adequate service. Staff, therefore, recommends that the Commission approve STi's request to encumber STi's assets in connection with a transfer of control as described in this application. Customers may still have exposure to losses to the extent they have prepaid for service or made deposits. Therefore, Staff recommends approval of the application subject to the condition that all customer deposits and prepayments be excluded from encumbrance and equivalent amounts be retained by STi. Staff further recommends that one copy of the executed security documents be filed with Docket Control, as a compliance item in this matter, within 90 days of the execution of any financing transaction authorized herein.



Steven M. Olea
Director
Utilities Division

SMO:AFF:lhbm\BH

ORIGINATOR: Armando F. Fimbres

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 GARY PIERCE
 Chairman

3 BOB STUMP
 Commissioner

4 SANDRA D. KENNEDY
 Commissioner

5 PAUL NEWMAN
 Commissioner

6 BRENDA BURNS
 Commissioner

7
8 IN THE MATTER OF THE APPLICATION)
9 OF STI PREPAID, LLC. AND VIVARO)
10 CORPORATION FOR EXPEDITED)
11 APPROVAL TO ENCUMBER ASSETS)
12 _____)

DOCKET NO. T-20517A-10-0426

DECISION NO. _____

ORDER

12 Open Meeting
13 March 1 and 2, 2011
14 Phoenix, Arizona

14 BY THE COMMISSION:

15 FINDINGS OF FACT

16 1. On October 19, 2010, STi Prepaid, LLC ("STi") and Vivaro Corporation ("Vivaro")
17 filed an application to request expedited approval, pursuant to Arizona Revised Statutes ("A.R.S.")
18 § 40-285 and to the extent necessary, to encumber STi's assets in connection with a transfer of
19 control as financed through indebtedness payable over a period of 27 months.

20 The Transaction

21 2. On September 22, 2010, Vivaro entered into an agreement and plan of merger with
22 STi whereby STi will merge into Vivaro Acquisitions LLC, a wholly-owned subsidiary of Vivaro,
23 with STi becoming the surviving entity. As a result thereof, Vivaro will acquire all membership
24 interests in STi and pay the current members of STi certain merger consideration in the form of
25 cash.

26 3. Immediately prior to the closing of the transaction, Baldwin Enterprises, Inc.
27 ("Baldwin"), an indirectly wholly-owned subsidiary of Leucadia National Corporation, will
28 provide a loan to Vivaro to finance the majority of the merger consideration to be paid to the

1 current members of STi. The Loan is amortizable over a 27-month period. STi will participate in
2 the loan arrangement by acting as a guarantor and by pledging its assets.

3 Staff's Analysis

4 4. In response to a Staff email data request, STi stated that prepaid funds and deposits
5 for Arizona customers will not be encumbered as STi does not hold customer deposits and does
6 not believe it holds prepaid funds based on STi's sale of prepaid cards in bulk to retailers who
7 resell the cards to customers. STi published a notice of financing application in the Arizona
8 Republic on February 4, 2011. The corresponding affidavit was provided to Staff on February 9,
9 2011.

10 5. A.R.S. § 40-285 requires public service corporations to obtain Commission
11 authorization to encumber certain utility assets. The statute serves to protect captive customers
12 from a utility's act to dispose of any of its assets that are necessary for the provision of service;
13 thus, it serves to preempt any service impairment due to disposal of assets essential for providing
14 service. Staff concludes that a pledge of the STi's assets would not impair the availability of
15 service to customers since STi provides competitive services that are available from alternative
16 service providers.

17 6. Based on its analysis of the proposed transaction, Staff concludes that the
18 transaction would not impair the financial status of STi, would not impair its ability to attract
19 capital, nor would it impair the ability of STi to provide safe, reasonable, and adequate service.

20 7. Staff, therefore, recommends that the Commission approve STi's request to
21 encumber STi's assets in connection with a transfer of control as described in this application.

22 8. Customers may still have exposure to losses to the extent they have prepaid for
23 service or made deposits. Therefore, Staff recommends approval of the application subject to the
24 condition that all customer deposits and prepayments be excluded from encumbrance and
25 equivalent amounts be retained by STi.

26 ...

27 ...

28

9. Staff further recommends that one copy of the executed security documents be filed with Docket Control, as a compliance item in this matter, within 90 days of the execution of any financing transaction authorized herein.

CONCLUSIONS OF LAW

1. STi Prepaid, LLC is a public service corporations within the meaning of Article XV of the Arizona Constitution and A.R.S. § 40-285.

2. The Commission has jurisdiction over STi Prepaid, LLC and the subject matter in this filing.

3. The Commission, having reviewed the filing and Staff's Memorandum dated February 14, 2011, concludes that it is in the public interest to grant approval for STi to transfer control and encumber assets as proposed and discussed herein.

ORDER

IT IS THEREFORE ORDERED that the application of STi Prepaid, LLC and Vivaro Corporation seeking approval to encumber STi Prepaid, LLC's assets in connection with a transfer of control as proposed herein, be and hereby is approved.

IT IS FURTHER ORDERED that STi Prepaid, LLC and Vivaro Corporation be authorized to engage in any transactions and to execute any documents necessary to effectuate the authorizations granted.

IT IS FURTHER ORDERED that the application of STi Prepaid, LLC and Vivaro Corporation is subject to the condition that all customer deposits and prepayments be excluded from encumbrance and equivalent amounts be retained by STi Prepaid, LLC.

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1 IT IS FURTHER ORDERED that one copy of executed security documents shall be filed
2 with Docket Control, as a compliance item, within 90 days of the decision in this matter.

3 IT IS FURTHER ORDERED that this Decision shall be become effective immediately.

4
5 **BY THE ORDER OF THE ARIZONA CORPORATION COMMISSION**

6
7 _____
CHAIRMAN

COMMISSIONER

8
9
10 _____
COMMISSIONER

COMMISSIONER

COMMISSIONER

11
12 IN WITNESS WHEREOF, I, ERNEST G. JOHNSON,
13 Executive Director of the Arizona Corporation Commission,
14 have hereunto, set my hand and caused the official seal of
this Commission to be affixed at the Capitol, in the City of
Phoenix, this _____ day of _____, 2011.

15
16
17 _____
ERNEST G. JOHNSON
EXECUTIVE DIRECTOR

18
19 DISSENT: _____

20
21 DISSENT: _____

22 SMO:AFF:lh\BH
23
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25
26
27
28

1 SERVICE LIST FOR: STI PREPAID, LLC. AND VIVARO CORPORATION
2 DOCKET NO. T-20517A-10-0426

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5 New York, New York 10001

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15 Arizona Corporation Commission
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17 Phoenix, Arizona 85007

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20 Arizona Corporation Commission
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